



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF / MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for return of the security deposit / and recovery of the filing fee.

The landlord's agent attended the hearing which was scheduled to commence by way of telephone conference call at 9:30 a.m. on November 22, 2012. However, despite scheduling of the hearing in response to applications by both parties, and despite the landlord's service of the application for dispute resolution and notice of hearing (the "hearing package") by registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered."

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to the written tenancy agreement in evidence, the fixed term of tenancy is from September 1, 2011 to August 31, 2012. The tenancy agreement provides that the tenancy may continue on a month-to-month basis following the expiration of the fixed term. Monthly rent of \$1,800.00 is due and payable in advance on the first day of each month, and a security deposit of \$900.00 was collected on August 22, 2010, near the time when tenancy originally began.

The landlord claims that notice to end tenancy effective at the end of August 2012 was provided by the tenant in a text message sent on August 3, 2012. Subsequently, by way of e-mail from the tenant to the landlord's agent by date of August 31, 2012, the

tenant gave notice to end the tenancy on September 1, 2012. A forwarding address was also provided in this e-mail. When the tenant vacated, the landlord found a unit in need of considerable cleaning. New renters were found effective October 1, 2012.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act speaks to the **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agent, I find that the tenant failed to give proper notice to end the tenancy, and that following the landlord's efforts to mitigate the loss of rental income, new renters were not found until effective October 1, 2012. In the result, I find that the landlord has established entitlement to compensation of \$1,850.00, which is comprised as follows:

\$1,800.00: *loss of rental income for September 2012*

\$50.00: *filing fee*

During the hearing the landlord's agent made a request to amend the original application. In short, despite the above entitlement, the landlord seeks to resolve the matter by simply retaining the security deposit of \$900.00. The landlord's request is granted and I order that the landlord retain the tenant's full security deposit as an offset against the larger entitlement which has been established.

In the absence of the tenant, although duly served with the landlord's hearing package and, herself an applicant in this dispute, the tenant's application is hereby dismissed.

Conclusion

I hereby order that the landlord retain the tenant's full security deposit of \$900.00

The tenant's application is hereby dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 22, 2012.

Residential Tenancy Branch